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BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

2012 AUG 31 P 4:57

Arizona Corporation Commission

GARY PIERCE, Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

ARIZONA CORPORATION COMMISSION  
DOCKETED  
DOCKET CONTROL

AUG 31 2012

DOCKETED BY

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In the matter of:

DOCKET NO. S-20757A-10-0373

Richard M. Schmerman, individually and  
d/b/a Diversified Financial and/or  
Diversified Financial Planners, and Amy  
Schmerman, husband and wife;

**SECURITIES DIVISION'S RESPONSE TO  
RESPONDENT COUNSEL'S MOTION TO  
WITHDRAW AND MOTION TO CONTINUE**

Respondents.

The Securities Division of the Arizona Corporation Commission requests that Alan Baskin's ("Mr. Baskin"), of Bade Baskin Richards, PC, motions to withdraw and to continue be denied unless good cause is provided to the Administrative Law Judge ("ALJ"). This matter is set for a hearing, to commence in less than two weeks, on September 10, 2012. Commission Rule A.A.C. R14-3-104(E) states:

Withdrawal of attorney. The Commission or presiding officer may permit the withdrawal of an attorney from any proceeding upon written application **and good cause shown** under such terms, conditions, and notices to clients and other parties as the Commission or presiding officer may direct. Oral application for withdrawal may be made during any open proceeding which is being reported.

(emphasis added). Here, Mr. Baskin is unable to provide the reasons for his request to withdraw at this late stage of the proceeding. Mr. Baskin is not even stating that he is withdrawing because of a conflict or that his continued representation would violate the attorney-client relationship or privilege. Rather, he states that to give an explanation of his reasons to withdraw would violate the attorney-client privilege. That is insufficient. The ALJ and the Division should not be required to guess the reasons for his request to withdraw or assume such reasons qualify as good cause. At the very least, Mr. Baskin should provide to the ALJ the good cause reasons for withdrawal, which

1 may be done in camera or with a filing under seal. Alternatively, assuming the attorney-client  
2 privilege is applicable, Mr. and Mrs. Schmerman may agree to waive the attorney-client privilege  
3 and allow Mr. Baskin to put forth an explanation of good cause.

4        Though not dispositive, it may be instructive to note that the requirement to show good  
5 cause or to make suitable arrangements is usually heightened in other civil venues when a matter  
6 has been set for trial. *See* Ariz. Rules Fam. Law Proc. 9(A)(2)(c) (No attorney shall be permitted to  
7 withdraw as attorney of record after an action has been set for trial unless: 1) the substituting  
8 attorney signs the application stating that such attorney is advised of the trial date and will be  
9 prepared for trial, or the client signs the application stating that the client is advised of the trial date  
10 and has made suitable arrangements to be prepared for trial, or 2) the court finds good cause to  
11 permit the attorney to withdraw); *See also* Ariz. Rules of Civ. Proc. 5.1(a)(2)(C) (No attorney shall  
12 be permitted to withdraw as attorney of record after an action has been set for trial, (i) unless there  
13 shall be endorsed upon the application therefor either the signature of a substituting attorney  
14 stating that such attorney is advised of the trial date and will be prepared for trial, or the signature  
15 of the client stating that the client is advised of the trial date and has made suitable arrangements to  
16 be prepared for trial, or (ii) unless the court is satisfied for good cause shown that the attorney  
17 should be permitted to withdraw).

18        This matter originated on September 9, 2010, was amended in December 2011, and has  
19 been continued numerous times to facilitate settlement discussions. Despite protracted settlement  
20 discussions, no agreement has been signed by Mr. and Mrs. Schmerman. Currently, settlement  
21 discussions between the parties have ended. The Division has not been provided with a detailed  
22 explanation on what matters prevent Mr. and Mrs. Schmerman from executing the consent order to  
23 resolve this matter and are concerned that another continuance will only delay the inevitable, that a  
24 hearing must be held.


25 ...

26 ...

1 Since no good reasons have been provided to the ALJ and the Division, we request that the  
2 motion to withdraw and motion to continue be denied.

3  
4 Respectfully submitted this 31st day of August, 2011.

5  
6 By:

  
Phong (Paul) Huynh  
Attorney for the Securities Division of the  
Arizona Corporation Commission

8  
9 ORIGINAL AND thirteen (13) COPIES of the foregoing  
filed this 31st day of August, 2011 with:

10 Docket Control  
11 Arizona Corporation Commission  
12 1200 W. Washington St.  
Phoenix, AZ 85007

13 COPY of the foregoing hand-delivered this  
31st day of August, 2011 to:

14 Mr. Marc E. Stern  
15 Administrative Law Judge  
16 Arizona Corporation Commission/Hearing Division  
1200 W. Washington St.  
Phoenix, AZ 85007

17 COPY of the foregoing mailed and emailed this  
18 31st day of August, 2011 to:

19 Alan Baskin, Esq.  
20 Bade Baskin Richards  
80 East Rio Salado Parkway, Suite 511  
Tempe, Arizona 85281

21 COPY of the foregoing mailed this  
22 31st day of August, 2011 to:

23 Richard & Amy Schmerman  
24 2613 E. Mitchell Dr.  
Phoenix, AZ 85016

25   
26 By: